

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
LYNDON B. JOHNSON SPACE CENTER  
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION  
(JOFOC)  
PURSUANT TO 10 U.S.C. 2304(c)(2)  
Federal Acquisition Regulation (FAR) 6.302-2**

**NNJ11HD52C, Environmental Compliance and Operations (ECO) Bridge Contract**

**1. This document is a justification for other than full and open competition prepared by the NASA Johnson Space Center (JSC).**

**2. The nature and/or description of the action being approved:**

The proposed action is to award a short-term, bridge contract to Navarro Research and Engineering Services, Inc. (Navarro), to provide necessary and critical environmental compliance and operation services at the White Sands Test Facility (WSTF), Las Cruces, New Mexico, for a period of up to 12 months. The value of this action is approximately \$10 million. This justification provides the rationale for contracting by other than full and open competition with Navarro for performance of these services at WSTF. These services are critical to ensure compliance with federal and state regulatory requirements, permits, and approved work plans associated with WSTF environmental compliance, restoration, and remediation activities.

The bridge contract is necessary because award of the ECO contract (NNJ11HA03C), planned to begin May 1, 2011, has been substantially delayed by a series of protests to the Government Accountability Office (GAO). The services are currently being performed under an extension of the Facilities Operation and Services Contract (FOSC), NNJ06HC02C, executed using the authority under FAR 52.217-8, *Option to Extend Services*. The clause allows the government to require continued performance of services within the limits and at the rates specified in the contract for a period not to exceed 6 months. The current period expires on September 30, 2011, with an option for an additional 30 days of performance through October 31, 2011, still available under the clause. However, because of performance risks due to the temporary and uncertain nature of this current contract, it is considered to be in the best interest of the government to award the proposed bridge contract to Navarro rather than exercising the final one-month option under the FOSC contract.

The ECO contract was originally awarded on February 28, 2011, under a competitive solicitation (NNJ10336475R). On March 14, 2011, an unsuccessful offeror filed a protest with GAO challenging the award of the ECO contract to Navarro made under the Request for Proposal (RFP) issued by NASA JSC. NASA proposed a corrective action plan (CAP) that was accepted by GAO, and the protest was dismissed on May 31, 2011. The CAP was implemented, and a new contract (NNJ11HB30C) was awarded on July 19,

2011. Protests were again received from two unsuccessful offerors on July 29, 2011. An automatic stay of performance under the Competition in Contracting Act (41 U.S.C. 253) was effected, and the successful offeror was directed to stop work on August 03, 2011. The Agency Report in response to the protest(s) was submitted to GAO on August 29, 2011. The 100-day period for GAO to issue a ruling (time limit imposed by 4 C.F.R. 21.9, time for decision by GAO) will end on November 7, 2011. However, it remains unknown whether a supplemental protest(s) will be submitted in response to the Agency Report, what the ruling of the GAO will be, and what action, if any, will be required before environmental services under the ECO solicitation will be available.

In order to ensure continuity of service regardless of the outcome of the protest, a bridge contract with a basic period of 4 months, and four, 2-month options is required. The 4-month basic period of October 1, 2011, through January 31, 2012, will provide a short-term solution for continuity of services in the event that GAO reaches a decision and the protest is resolved. The 4-month period allows time for the GAO to reach a decision and will also provide adequate time for the transition period of the bridge contract. Under the transition period, the bridge contractor will be required to undergo several phase-in requirements which include recruitment and retention of employees, identification of schedule and key milestones, novation of existing contracts, negotiation of a collective bargaining agreement for union personnel, and implementation of a readiness approach for assuming all ongoing operations and responsibilities in a safe, effective, and environmentally compliant manner. The four 2-month options will provide the government with the contractual flexibility to continue the services should the protest process be further prolonged. In addition to the extension of the FOSC contract, this JOFOC represents the second effort by the government to implement a short term measure to continue these services due to a protest.

### **3. Description of the supplies or services required, include an estimated value:**

The subject procurement includes the following environmental compliance, restoration, remediation, and operations tasks in support of WSTF: maintain site-wide multi-media environmental compliance, manage a large-scale groundwater monitoring program, and successfully initiate and complete environmental clean-up projects (restoration). This support is mandated by federal and state regulatory policies and requirements, which further includes ground water treatment sampling and analyses, the maintenance and operations of systems designed to treat a contaminated plume (which includes the Plume Front and Mid-Plume treatment facilities), hazardous waste management and operating permit compliance, and National Environmental Policy Act project evaluations. These services are critical in enabling WSTF to perform hazardous testing and evaluations for NASA.

The contract type will be Indefinite-Delivery-Indefinite-Quantity, cost-plus-fixed-fee contract with an estimated value of \$10 million for the 12-month period.

**4. Statutory authority permitting other than full and open competition:**

The statutory authority for proceeding with this acquisition under other than full and open competition is 10 U.S.C. 2304(c)(2) as provided for by FAR 6.302-2, *Unusual and compelling urgency*, which states that full and open competition need not be provided when the agency's need for the supplies or services is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

**5. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited:**

Any delay in award of a bridge contract for continuity of environmental services would have the potential for serious injury and financial harm to the Government. The environmental services at WSTF are essential to avoid potential injury to the environment and to personnel performing work onsite, as well as the adjacent communities. WSTF handles many toxic and hazardous materials and performs hazardous testing operations, which is the core mission of the facility. It is for this very reason that WSTF exists as a remote site. WSTF has worked diligently with federal, state, and local regulators to ensure that NASA is a good steward of the environment. WSTF has also laid tremendous groundwork to gain the trust and cooperation of the local community to ensure they view NASA as responsible in keeping the community's interest in mind. Based on past fines and penalties the facility has experienced, fines can range anywhere from \$25,000 and up, per day, for each violation, which could also result in other impacts including, but not limited to, additional reporting requirements and increased oversight by the New Mexico Environment Department (NMED). Additionally, repeat findings could increase the resultant fines or loss of permits. NMED has the regulatory authority to take legal action (compliance order) against WSTF to ensure the systems are operational. The potential injury to people or the environment of not operating the groundwater treatment systems could put WSTF and the Agency in risk of legal action from NMED. By not attending to the groundwater contaminants the local community could be put at risk of exposure to the chemicals contained in the plume, which could lead to adverse health effects.

WSTF's contaminated groundwater plume is approximately four miles long by two miles wide at its widest point. The site-wide permit and Groundwater Monitoring Plan approved by NMED requires sampling of approximately 220 sampling zones throughout the year. This amount of sampling is typically accomplished on a daily basis with multiple two-man teams. Any gap in service would place WSTF at risk of heavy violations, penalties, and fines. Operations at WSTF must be performed in accordance with existing environmental permits, laws, executive orders, and regulations (e.g., Clean Air Act, Resource Conservation and Recovery Act (RCRA), Clean Water Act, and Safe Drinking Water Act). For example, WSTF operations are enabled through 11 multi-media permits including a RCRA Site-Wide Operating Permit. The remaining permits include four air permits, five discharge permits, a post-closure care permit for the closed landfill, and one site-wide Hazardous Waste Operating Permit. Associated with each of

these permits are requirements that must be performed on a schedule ranging from daily, weekly, to monthly as specified in the permit. Failure to comply with the requirements in these permits would not only result in violations, fines, and penalties, but would also result in the loss of the permit. Without environmental services, drinking water requirements and wastewater operations for the sewage system would not be performed, jeopardizing day-to-day operations to not only WSTF but also neighboring facilities dependent on these services (NASA Goddard White Sands Test Facility and the Aerospace Defense Facility Southwest).

With respect to the permitted operations, any gap in service could impact regulatory compliance and cause the regulatory agency to rescind the permits. If any of WSTF's permits were lost, this would jeopardize the capability to generate waste, which would severely impact operations or could possibly result in the closure of the site.

Due to the hazardous nature of the work performed at the facility in support of critical NASA missions, it is essential that there be no disruptions in environmental services at WSTF that would result in a site closure. Because of the hazardous testing conducted at WSTF, the facility is classified as a Large Quantity Generator of Hazardous Waste, with shipments ranging from five to 20 drums of hazardous waste every month. This waste must be transferred offsite within a specific time period or is subject to violation of federal and state regulations, which result in subsequent fines/penalties.

Based on the nature and severity of regulatory impacts, this contract requires personnel with particular education, skills, and experience in the environmental science and engineering fields to ensure the work is properly performed. Due to the temporary and uncertain nature of the current contract, the incumbent contractor is not hiring any personnel to backfill the losses they are currently sustaining. The lean staffing is contributing to a high risk of mission accomplishment in terms of waste shipments being sent out on time, waste water sampling, and analytical services being completed in a timely manner. It has created additional stress for the personnel that have chosen to remain on the contract and created gaps in needed skills and experience. According to a retention proposal submitted by the current contractor, Enterprise Advisory Services, Inc. (EASI), within the past 2 months, the situation is creating "multiple single points of failure" due to workload, required qualifications, and division of responsibilities spread out among a lean staff." Continuing to extend the current contract and prolong this situation represents a significant risk to the government that contract performance will continue to deteriorate to the point of actual mission failure.

Stability and continuity are also necessary to minimize the risk of performance failure. In determining a solution that represents the least amount of risk for the government, stability was considered to be a critical factor. Providing as much stability and certainty as possible under the circumstances is the most proactive way the government can help to improve conditions for employee retention. Adding the services by modification to other existing contracts was also considered. However, adding the services to one of these contracts guarantees that over a period of less than a year, three different contractors will have performed these services. That is an unreasonable amount of turnover, representing

an unacceptable level of risk for such critical services. Of all the options considered, awarding a bridge contract to Navarro offers the most stability.

Navarro is a responsible source with the qualifications to provide these services within the required timeframe. They submitted a proposal in response to the competitive ECO solicitation that was evaluated based on mission suitability, past performance, and cost/price. Navarro's proposal submitted in response to the RFP was selected for award as the best value to the government. The government responded to the protests by offering an Agency Report that supports the selection of Navarro for award of this contract and requesting that the protests be dismissed. Should the GAO dismiss the protests, the stop-work order issued under the ECO contract will be lifted. Selecting Navarro for the bridge contract effort provides the most stability and the least disruption with regards to performance of the services and the workforce. Under the ECO contract, Navarro had proposed to retain 100 percent of the incumbent workforce.

Currently, the situation surrounding the environmental services is deteriorating. The uncertainty of the future of the contract is creating a stressful work environment and leading to low morale among the workforce. According to EASI in its request for retention bonuses, "lost critical skills personnel...to other employment opportunities and is at risk of losing additional critical staff...due to the temporary nature of its current employment situation." Over the last 4 months, several employees in both administrative and technical positions have resigned or are working part time while transitioning to a new job. They are leaving the contract for more secure, long-term employment elsewhere. While the government does not typically get involved in contractor-employee issues, the situation is of grave concern to WSTF due to the environmental implications to the local community and NASA.

**6. Description of the efforts made to ensure that offers are solicited from as many potential sources as practicable:**

In accordance with FAR 5.202, *Exceptions*, paragraph (a)(2), a notice of the proposed contract action is not required to be posted when the action is made under the conditions described in FAR 6.302-2, *Unusual and Compelling Urgency*, and the government would be seriously injured if the Agency complies with the time period specified in FAR 5.203, *Publicizing and response time*.

Due to the limited time available, the required posting time of 15 days would jeopardize the government's ability to procure these services prior to September 30, 2011. The 15-day posting time would not allow adequate time for the proposed source to prepare a proposal, for the government to evaluate the proposal and conduct negotiations, obtain the necessary reviews and approvals and award the contract prior to September 30, 2011, and allow time for badging of employees to gain access to the WSTF facility for transition time with the current contractor.

The services under the ECO solicitation were advertised and competed to ensure that offers were solicited from as many potential sources as practicable. That information will be used to ensure that the government may negotiate a fair and reasonable price for this interim contract.

Conducting a competitive procurement for this bridge period would be cost and schedule prohibitive. With less than 30 days until the expiration of the current contract extension, there is not sufficient time to carry out the process of advertising, soliciting, and evaluating competitive proposals for these services. Continuity of these critical services is essential to prevent or minimize violations and potential corresponding fines and penalties.

**7. Description of the market survey conducted and the results or a statement of the reasons a market survey was not conducted:**

A market survey was conducted in the fall of 2009 in preparation for the ECO solicitation. Six competitive quotes were received in response to the solicitation which was posted to FedBizOpps on July 27, 2010. The Agency is aware that other sources could perform these services, given adequate lead time. However, due to the two current protests and with less than 30 days until contract expiration, the Agency does not have sufficient time to allow for competition. Attempting to award a competitive bridge contract would put WSTF in jeopardy of having a break in service. Any disruption in service would pose unacceptable risk to the installation, the surrounding community, and the gency.

**8. Other facts supporting the use of other than full and open competition:**

In meeting the environmental mission requirements, the Agency considered several options. Further extending the period of performance of contract NNJ06HC02C, with EASI, is not practical because the authority of FAR 52.217-8 is no longer applicable. The government does not have the authority to require continued performance at the current contract rates. The Agency also considered issuing a task order under an existing Department of Defense, Environmental Construction and Operations & Services (ECOS) contract issued by the Air Force Center for Engineering and the Environment (AFCEE). Research indicated that AFCEE is accepting non-Air Force customers on a case-by-case basis for construction projects only, and not for environmental services. NASA was informed that the ECOS contract was close to the contract ceiling and that AFCEE is not accepting new purchase requests until after October 1, 2011. Based on these factors, AFCEE is not a viable option.

**9. Sources, if any, that expressed an interest in writing in the acquisition:**

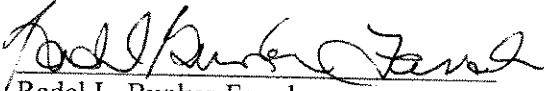
In accordance with FAR 5.202(a) (2), a synopsis is not required for a proposed contract action that is made under the conditions described in FAR 6.302-2.

**10. The actions, if any the Agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required:**

The Agency took the proper steps to advertise and solicit competition for the ECO contract for these services; however, the barrier to competition is time. There are presently no steps the Agency can take to remove or overcome this barrier. The current contract extension expires on September 30, 2011, with only an additional 30 days beyond that to allow for any transition, and the Agency cannot proceed with awarding the ECO contract until the GAO reaches a decision regarding the protests.

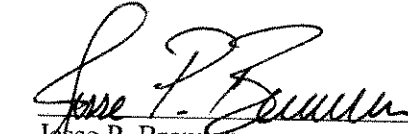
The government has acted in good faith throughout this competitive process. The lack of time is not a result of poor planning on the part of the Agency. The Agency adequately planned the acquisition of these services, beginning the process over 18 months in advance of the expiration of the existing contract. The solicitation was posted 9 months prior to the expiration of the existing contract, and the source selection decision was announced nearly 60 days prior to contract expiration, allowing plenty of time for the planned 30-day phase in period. The protests were unexpected and resulted in a significant delay of the award of the ECO contract for which the Agency could not have reasonably been expected to be prepared.

Technical Officer: I certify that the supporting data presented in this justification are accurate and complete.

  
Radel L. Bunker-Farrar  
Contracting Officer Technical Representative


9-9-11  
Date

Contracting Officer: I hereby determine that the anticipated cost to the Government will be fair and reasonable and certify that this justification is accurate and complete to the best of my knowledge and belief.

  
Jesse P. Brennan  
Contracting Officer


9/9/11  
Date

CONCURRENCE:

  
Debra L. Johnson  
Director, Office of Procurement

9/15/11  
Date

APPROVAL:

  
Ellen Ochoa  
Center Competition Advocate

9/15/11  
Date